

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT)	)	Master File
	)	No. CV-07-5944 SC
ANTITRUST LITIGATION	)	
_____	)	MDL No. 1917
	)	
This document relates to:	)	ORDER APPROVING AND
	)	ADOPTING SPECIAL
ALL ACTIONS	)	MASTER'S REPORT,
	)	RECOMMENDATIONS AND
	)	TENTATIVE RULINGS RE:
	)	DEFENDANTS' MOTIONS
	)	<u>TO DISMISS</u>
_____	)	

**I. INTRODUCTION**

On February 5, 2010, the Special Master in the above matter rendered his Report, Recommendations, and Tentative Rulings Regarding Defendants' Motions to Dismiss. Docket No. 597 ("Report"). Defendants have filed objections, Docket Nos. 605, 607, 608, 610, 611, 612, 613, 614, 616, 617, 618, 619, 620, 622, and Plaintiffs have responded, Docket Nos. 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641. The Court held a hearing on Defendants' objections on March 18, 2010. Having considered the parties' filings and contentions, the Court hereby APPROVES and ADOPTS the Special Master's rulings and recommendations.

**II. BACKGROUND**

This case concerns alleged conspiracies in the Cathode Ray

1 Tube ("CRT") industry. On June 16, 2008, the Court appointed the  
2 Honorable Charles A. Legge, United States District Court Judge  
3 (Retired), as a Special Master to assist the Court in this  
4 litigation. Docket No. 302 ("Order Appointing Special Master").  
5 On March 16, 2009, Direct Purchaser Plaintiffs filed a  
6 Consolidated Amended Complaint. Docket No. 436 ("Direct Compl.").  
7 Indirect Purchaser Plaintiffs filed a Consolidated Amended  
8 Complaint on the same day. Docket No. 437 ("Indirect Compl.").  
9 The Special Master reviewed Defendants' joint and individual  
10 motions to dismiss, conducted a hearing on the motions to dismiss  
11 on October 5, 2009, and issued his Report on February 5, 2010.

### 12 13 **III. LEGAL STANDARD**

14 Federal Rule of Civil Procedure 53 requires that in acting on  
15 a Special Master's Report, "the court must give the parties notice  
16 and an opportunity to be heard." Fed. R. Civ. P. 53(f)(1). The  
17 parties stipulated that the Court would "review findings of fact  
18 made or recommended by the Special Master for clear error" and  
19 "review de novo any conclusions of law." Order Appointing Special  
20 Master ¶ 18 (emphasis in original).

### 21 22 **IV. DISCUSSION**

#### 23 **A. Standard of Review**

24 Most of the Special Master's recommendations are conclusions  
25 of law that the Court will review de novo. The first  
26 recommendation appears to rest on a finding of fact; namely, that  
27 the relevant products alleged in the complaints are CRTs and CRT

1 Products. Report at 3-7, 33. However, out of an abundance of  
2 caution, the Court reviews all of Judge Legge's recommendations de  
3 novo.

4 **B. Relevant Products**

5 Judge Legge recommends that both the Direct Complaint and the  
6 Indirect Complaint allege conspiracies regarding both CRTs and CRT  
7 Products. Report at 3-7. Having reviewed both complaints, the  
8 Court agrees with the Special Master. Both complaints contain  
9 numerous allegations concerning both CRTs and the products into  
10 which CRTs are incorporated; namely, televisions and computer  
11 monitors.

12 With regard to the Direct Complaint, there can be no doubt  
13 that the Direct Purchaser Plaintiffs are alleging conspiracies  
14 regarding both CRTs and CRT Products. "CRT Products" is defined  
15 by the Direct Purchasers as including color display tube products  
16 and color picture tube products. Direct Compl. ¶ 1. Color  
17 display tubes are the CRTs used in computer monitors, and color  
18 picture tubes are the CRTs used in televisions. Id. Plaintiffs  
19 allege they bought CRT Products. Id. ¶¶ 11-23. The class  
20 allegations encompass CRT Products. Id. ¶¶ 85-92. The trade and  
21 commerce allegations mention CRT Products. Id. ¶¶ 96, 97. The  
22 allegations regarding collusive meetings refer to CRT Products.  
23 Id. ¶¶ 134-53. Indeed, according to the Direct Purchaser  
24 Plaintiffs, CRT Products are mentioned 135 times in the Direct  
25 Complaint. Docket No. 633 ("Opposition to Joint Objections") at  
26 8.

27 The Indirect Complaint is also replete with allegations  
28

concerning both CRT and CRT Products. The very first paragraph alleges that "during the class period the Defendants conspired to fix, raise, maintain, and/or stabilize prices of CRT Products sold in the United States." Indirect Compl. ¶ 1. CRT Products are defined by the Indirect Purchasers to include "(a) CRTs; and (b) products containing CRTs, such as television sets and computer monitors."<sup>1</sup> Id. ¶ 15. The Indirect Purchaser Plaintiffs allege they purchased CRT Products from one or more of the Defendants. Id. ¶¶ 19-49. The Indirect Purchaser Plaintiffs allege a relationship between CRTs and the products into which CRTs are incorporated such that Defendants were often able to pass through the higher prices for CRTs to consumers. Id. ¶¶ 222-39. The Court concludes that both complaints allege conspiracies regarding both CRTs and the products into which CRTs are incorporated.

**C. Objections Based on Pleading Standards**

Judge Legge considered whether the complaints contain enough factual allegations to give rise to plausible conspiracy claims regarding both CRTs and CRT Products against these Defendants. Report at 7-11. Judge Legge recommended that the Court deny the motions to dismiss based on the pleading standards articulated by the Supreme Court in Bell Atlantic Corp. v. Twombly, 550 U.S. 544

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<sup>1</sup> The Court acknowledges that this definition in the Indirect Complaint is somewhat vague, since references to "CRT Products" include both CRTs and the finished products into which they are incorporated. Nonetheless, and as explained below, the Court agrees with Judge Legge that the complaints contain sufficient allegations of a conspiracy to fix prices of both CRTs and the products into which they are incorporated. Whether Plaintiffs will be able to prove their allegations is a question for a later stage of these proceedings.

(2007), and Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009). The Court agrees with Judge Legge's recommendation.

To survive a motion to dismiss for failure to state a claim, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570.

"Specific facts are not necessary; the statement need only give the defendant[s] fair notice of what . . . the claim is and the grounds upon which it rests." Erickson v. Pardus, 551 U.S. 89, 93 (2007) (internal quotation marks omitted). "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, 129 S. Ct. at 1950. In Twombly, an antitrust case, the Supreme Court noted that:

Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. . . . [A]n allegation of parallel conduct and a bare assertion of conspiracy will not suffice.

550 U.S. at 556.

Here, the Court finds that both complaints contain sufficient factual allegations to give rise to plausible conspiracy claims regarding both CRTs and CRT Products. Both complaints allege that on February 10, 2009, a federal grand jury indicted C.Y. Lin, former Chairman and CEO of Defendant Chunghwa Picture Tubes, Ltd. ("Chunghwa"), for participating in a conspiracy to fix the price of CRTs. Direct Compl. ¶ 126; Indirect Compl. ¶ 205. When

1 announcing the indictment, the Acting Assistant Attorney General  
2 in charge of the Antitrust Division suggested the conspiracy  
3 extended beyond CRTs themselves: "This conspiracy harmed countless  
4 Americans who purchased computers and televisions using cathode  
5 ray tubes sold at fixed prices." Id. Both complaints note that  
6 foreign antitrust enforcement authorities are investigating  
7 whether there was price-fixing in the CRT market. Direct Compl.  
8 ¶¶ 127-33; Indirect Compl. ¶¶ 206-13.

9 Direct Purchaser Plaintiffs allege that the conspiracy was  
10 effectuated through agreements and common understandings reached  
11 in at least 500 meeting between 1995 and 2007. Direct Compl.  
12 ¶ 134. It is alleged that the meetings became more organized in  
13 1997, when they became known as "Glass Meetings." Id. ¶ 137. The  
14 Direct Complaint explains the structure and typical pattern of the  
15 meetings, some of which were attended by individuals at the  
16 highest level of Defendants' companies, and some of which  
17 allegedly occurred on golf courses. Id. ¶¶ 138-53. It is alleged  
18 that Defendants or their agents agreed to fix prices, exchange  
19 information, coordinate public statements regarding capacity and  
20 supply, keep meetings secret, allocate market share and customers,  
21 and restrict output. Id. ¶ 138. The Direct Complaint alleges  
22 that:

23 The agreements encompassed not only prices  
24 charged to third party customers, but, in the  
25 case of vertically integrated manufacturers  
26 who produced both CRTs and CRT Products, also  
27 encompassed: (a) prices charged by the CRT  
28 manufacturing arm of each such integrated  
company to the corporate division or  
subsidiary that manufactured or sold computer  
monitors, television or other similar products

1 and (b) price floors on quotations offered by  
2 the competitors of the integrated company to  
3 such a division or subsidiary. Defendants  
4 also considered the internal pricing of  
5 products containing CRTs in agreeing upon the  
6 prices at which CRTs were set.

7 Id. ¶ 144.

8 The Direct Complaint contains allegations supporting the  
9 economic plausibility of the alleged conspiracy. See, e.g., id.  
10 ¶¶ 112-21 (describing market concentration and joint ventures  
11 among Defendants), ¶¶ 188-97 (describing stable and increasing  
12 prices for CRT Products despite factors that should have caused  
13 price declines, such as emergence of flat panel technology).

14 The Indirect Complaint contains similar allegations. See,  
15 e.g., Indirect Compl., ¶¶ 121-39 (describing structural  
16 characteristics of CRT Product market, including barriers to  
17 entry, and how the market conducive to collusive activity), ¶¶  
18 140-88 (allegations of group and bilateral meetings, "Glass  
19 Meetings," and meetings on golf courses, some of which were  
20 attended by high-level company executives), ¶¶ 189-202  
21 (allegations of unnatural and sustained price stability or unusual  
22 upward price movement in the CRT Product market). The Indirect  
23 Purchaser Plaintiffs allege that Defendants:

24 agreed on the prices at which certain Defendants  
25 would sell CRTs to their own corporate  
26 subsidiaries and affiliates that manufactured  
27 end products, such as televisions and computer  
28 monitors. . . . Defendants . . . concluded that  
in order to make their CRT price increases  
stick, they needed to make the increase high  
enough that their direct customers (CRT TV and  
monitor makers) would be able to justify a  
corresponding price increase to their customers.  
In this way, Defendants ensured that price

1 increases for CRTs were passed on to indirect  
2 purchasers of CRT Products.

3 Id. ¶¶ 154-55. The Indirect Purchaser Plaintiffs allege that  
4 manufacturers were raising the price of monitors in 2004. Id.  
5 ¶ 197.

6 Many of Defendants' objections rely on Kendall v. VISA U.S.A.  
7 Inc., 518 F.3d 1042 (9th Cir. 2008). The case is distinguishable.  
8 The Ninth Circuit panel affirmed the district court's dismissal of  
9 an antitrust action where, after conducting discovery, plaintiffs  
10 were unable to amend their complaint to plead evidentiary facts  
11 showing banks entered into agreements to restrain trade. Id. at  
12 1048. Here, the complaints allege a governmental investigation,  
13 hundreds of meetings between 1995 and 2007, and detailed  
14 allegations concerning the structure and typical pattern of those  
15 meetings.

16 For the most part, Defendants' objections re-hash arguments  
17 that have been considered and rejected by courts in this district.  
18 See, e.g., In re Flash Memory Antitrust Litig., 643 F. Supp. 2d  
19 1133, 1142, 1150 (N.D. Cal. 2009)(finding direct and indirect  
20 purchasers' allegations sufficient to state antitrust claims  
21 against manufacturers, sellers and distributors of flash memory);  
22 In re TFT-LCD (Flat Panel) Antitrust Litig., 559 F. Supp. 2d 1179,  
23 1184-85 (N.D. Cal. 2009)(finding direct and indirect purchasers'  
24 allegations sufficient to state antitrust claims against  
25 manufacturers, distributors, and sellers of thin film transistor  
26 liquid crystal display panels and products).

27 Indeed, the complaints here are very similar to the  
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1 complaints Judge Illston considered in In re TFT-LCD (Flat Panel)  
2 Antitrust Litigation. In that case, the complaints alleged  
3 numerous conspiratorial communications, governmental  
4 investigations, specific information concerning the structure and  
5 content of meetings, allegations that the conspiracy was organized  
6 at the highest level of the defendant organizations, and  
7 allegations that it was implemented by related companies within a  
8 corporate family. Id. at 1184. Here, as outlined above, the  
9 complaints contain similar factual allegations. Drawing on its  
10 judicial experience, this Court concludes the allegations  
11 contained in the Direct Complaint and the Indirect Complaint meet  
12 the pleading standards articulated by the Supreme Court in Twombly  
13 and Iqbal.

14 **D. Objections Based on Failure to Adequately Plead Against**  
15 **Each Defendant**

16 The Special Master recommends that the complaints should not  
17 be dismissed based on a failure to adequately plead against each  
18 defendant. Report at 11-16. Courts in this district do not  
19 require plaintiffs in complex, multinational, antitrust cases to  
20 plead detailed, defendant-by-defendant allegations; instead they  
21 require plaintiffs "to make allegations that plausibly suggest  
22 that each Defendant participated in the alleged conspiracy." In  
23 re TFT-LCD (Flat Panel) Antitrust Litig., 559 F. Supp. 2d at 1185  
24 (quoting In re Static Random Access Memory (SRAM) Antitrust  
25 Litig., 580 F. Supp. 2d 896, 904 (N.D. Cal. 2008)). In complex,  
26 multinational, conspiracy cases, courts in this district review  
27 specific allegations in the context of the complaint taken as a  
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1 whole. In re Flash Memory Antitrust Litig., 643 F. Supp. 2d at  
2 1144, 1147, 1148; In re TFT-LCD (Flat Panel) Antitrust Litig., 559  
3 F. Supp. 2d at 1185. Although not a pleading standards case, this  
4 approach is consistent with the Supreme Court's admonition in  
5 Continental Ore Company v. Union Carbide and Carbon Corporation  
6 that the "character and effect of a conspiracy are not to be  
7 judged by dismembering it and viewing its separate parts, but only  
8 by looking at it as a whole." 370 U.S. 690, 699 (1962).

9 Having reviewed the complaints as a whole, the Court  
10 determines that the factual allegations plausibly suggest that  
11 each Defendant participated in the alleged conspiracy. As well as  
12 the factual allegations described above, see Part IV(B-C), supra,  
13 both complaints contain allegations concerning specific  
14 Defendants' participation in the alleged unlawful meetings and  
15 agreements. Direct Compl. ¶¶ 154-75; Indirect Compl. ¶¶ 166-88.  
16 Although Plaintiffs often refer to a corporate family by a single  
17 name, they allege that employees engaged in conspiratorial  
18 meetings on behalf of members of their corporate families, that  
19 participants did not always know the corporate affiliation of  
20 their counterparts and did not distinguish between the entities  
21 within a corporate family, and that participants "entered into  
22 agreements on behalf of, and reported these meetings and  
23 discussions to, their respective corporate families. As a result,  
24 the entire corporate family was represented in meetings and  
25 discussions by their agents and was a party to the agreements  
26 reached in them." Direct Compl. ¶ 154; Indirect Compl. ¶ 188.

27 Samsung Electronic Co., Ltd. ("SEC") and Samsung Electronics  
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1 America, Inc. ("SEAI") object based on the fact that they do not  
2 manufacture CRTs; instead, they sell finished products. See  
3 Docket Nos. 616 ("Samsung Objections re: Direct Complaint"), 617  
4 ("Samsung Objections re: Indirect Complaint"). However, both  
5 complaints describe the relationship between the Samsung  
6 Defendants. Direct Compl. ¶¶ 58-66; Indirect Compl. ¶¶ 62-71. It  
7 is alleged that SEC dominated and controlled the finances,  
8 policies, and affairs of SEAI, and the other Samsung SDI entities,  
9 relating to the alleged antitrust violations. Id.

10 Both complaints allege that "Samsung, through SEC, Samsung  
11 SDI, Samsung Malaysia, Samsung SDI Shenzhen, and Samsung SD  
12 Tianjin" participated in hundreds of meetings between 1995 and  
13 2006 where agreements were made regarding price, output  
14 restrictions, and customer and market allocation of CRT Products.  
15 Direct Compl. ¶ 166; Indirect Compl. ¶ 166. The complaints allege  
16 that SEAI was represented at the meetings, and that it wished to  
17 ensure that the prices paid for CRT products did not undercut the  
18 CRT pricing agreements reached at the meetings. Direct Compl.  
19 ¶ 167; Indirect Compl. ¶ 167. SEC acknowledges that it has a  
20 financial stake in Samsung SDI, a company that sells CRTs. See  
21 Samsung Objections re: Direct Complaint at 1. Indeed, Samsung SDI  
22 is alleged to have controlled twenty-four per cent of the CRT  
23 market in 2002. Direct Compl. ¶ 112. It is economically  
24 plausible that affiliated companies would wish to see any price  
25 increases in CRTs passed through to the purchasers of CRT  
26 Products.

27 Panasonic Corporation of North America ("PNA") and Panasonic  
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1 Corporation ("Panasonic Corp.") also object based on the fact that  
2 they sell finished products. See Docket Nos. 605 ("Panasonic  
3 Objections re: Direct Complaint"), 608 ("Panasonic Objections re:  
4 Indirect Complaint"). However, it is alleged that Panasonic  
5 Corp., a Japanese company, dominated and controlled the finances,  
6 policies and affairs of the other Panasonic entities relating to  
7 the alleged antitrust violations. Direct Compl. ¶¶ 46-50,  
8 Indirect Compl. ¶¶ 80-86.

9 The Direct Purchaser Plaintiffs allege that "Panasonic,  
10 directly or through Matsushita Malaysia, participated in several  
11 dozen bilateral and group meetings from 1996 through at least 2003  
12 in which unlawful agreements as to . . . price, output  
13 restrictions, and customer and market allocation of CRT Products  
14 occurred." Direct Compl. ¶ 162. The Indirect Purchaser  
15 Plaintiffs allege that between 1996 and 2003, Panasonic Corp.  
16 participated in several Glass Meetings. Indirect Compl. ¶ 181.  
17 They allege that after 2003, Panasonic participated through its  
18 joint venture with Toshiba, MT Picture Display Co., Ltd. ("MTPD").  
19 Id. High-level sales managers from Panasonic and MTPD allegedly  
20 participated. Id. Indeed, MTPD is alleged to have led many of  
21 the Glass Meetings. Id. ¶ 183. It is alleged that Panasonic  
22 engaged in bilateral meetings with other Defendants, and that  
23 during these meetings, agreements were reached regarding prices  
24 and supply levels for CRT Products. Id. ¶ 181. Both complaints  
25 allege that PNA wished to ensure prices paid by purchasers of CRT  
26 products would not undercut the pricing agreements reached at the  
27 Glass Meetings. Direct Compl. ¶ 163; Indirect Compl. ¶ 182. Such  
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1 allegations make economic sense to the Court, especially given  
2 that MTPD was engaged in the manufacture of CRTs, and is a  
3 Panasonic-related entity. See Panasonic Objections re: Direct  
4 Complaint at 2 n.1.

5 For similar reasons, the Court finds that the allegations in  
6 the Direct Complaint and the Indirect Complaint are sufficient to  
7 state a claim as to each of the Toshiba, LG Electronics, Hitachi,  
8 and Philips entities. Both complaints describe the relationships  
9 between the Toshiba entities, and it is alleged that Toshiba  
10 Corporation dominated and controlled the other Toshiba entities in  
11 relation to the alleged antitrust violations. Direct Compl.  
12 ¶¶ 71-78; Indirect Compl. ¶¶ 72-78. Representatives of the  
13 Toshiba entities are alleged to have participated in over fifty  
14 bilateral and group meetings between 1995 and 2003. Direct Compl.  
15 ¶ 171; Indirect Compl. ¶ 177. The Indirect Purchaser Plaintiffs  
16 allege that Toshiba had a technology transfer agreement in 1995  
17 with Chunghwa, the company whose CEO was indicted by the  
18 Department of Justice. Indirect Compl. ¶ 128(g). The Indirect  
19 Complaint quotes from Toshiba's 2008 Annual Report, which states  
20 that the group was being investigated by the European Commission  
21 and/or the U.S. Department of Justice for violations of  
22 competition laws with respect to CRTs. Id. ¶ 212. The Indirect  
23 Complaint alleges that Toshiba and Panasonic formed MTPD in 2002  
24 in order to consolidate their CRT manufacturing facilities and  
25 limit production of CRTs. Indirect Compl. ¶¶ 72, 80, 125, 177,  
26 198. Taken together with the other allegations in the complaints,  
27 and the allegations that participants in meetings entered into  
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1 agreements on behalf of their corporate families, these factual  
2 allegations plausibly suggest that each Toshiba Defendant  
3 participated in the alleged conspiracy.

4 Both complaints describe the relationships between the LG  
5 Electronics entities. Direct Compl. ¶¶ 41-45; Indirect Compl.  
6 ¶¶ 50-53. LG Electronics, Inc. is alleged to have dominated and  
7 controlled the finances, policies, and affairs of LG Electronics  
8 USA, Inc., and LG Electronics Taiwan Taipei Co., Ltd., in relation  
9 to the alleged violations. Direct Compl. ¶¶ 42, 43; Indirect  
10 Compl. ¶¶ 51, 52. The LG Electronics Defendants are alleged to  
11 have participated in a dozen bilateral meetings and over a hundred  
12 group meetings between 1995 and 2006. Direct Compl. ¶¶ 160, 175.  
13 To the extent that LG Electronics USA, Inc. distributed products  
14 in the United States, the complaints allege it wished to ensure  
15 prices for products would not undercut pricing agreements  
16 regarding CRTs. Direct Compl. ¶ 161. There are also allegations  
17 that the LG Electronics entities participated in meetings at trade  
18 associations and trade events that were used to further the  
19 conspiracy. Direct Compl. ¶¶ 176-80.

20 Both complaints describe the relationships between the  
21 Hitachi entities. Direct Compl. ¶¶ 30-36; Indirect Compl. ¶¶ 87-  
22 93. The complaints allege that Hitachi, Ltd., a Japanese company,  
23 dominated and controlled the finances, policies, and affairs of  
24 Hitachi America, Ltd., Hitachi Asia, Ltd., Hitachi Displays, Ltd.,  
25 and Hitachi Electronic Devices (USA), Inc., relating to the  
26 antitrust violations alleged. Id. The Direct Purchaser  
27 Plaintiffs allege that the Hitachi entities participated in over a  
28

dozen illegal bilateral and group meetings from 1996 through at least 2001. Direct Compl. ¶ 157. They allege that Hitachi America, Ltd., and Hitachi Electronic Devices (USA), Inc. were represented at the meetings and were parties to the agreements entered at them. Id. ¶ 158. They allege that these distributors of CRT Products wished to ensure the prices paid by consumers did not undercut the pricing agreements regarding CRTs. Id. The Indirect Purchaser Plaintiffs allege that the Hitachi entities participated in several Glass Meetings, and that the meetings were attended by high-level sales managers from Hitachi. Indirect Compl. ¶ 179.

Both complaints describe the relationships between the Philips entities. Direct Compl. ¶¶ 51-56; Indirect Compl. ¶¶ 54-60. The complaints allege that Koninklijke Philips Electronics N.V. ("Royal Philips"), a Dutch entity, dominated and controlled the finances, policies, and affairs of Philips Electronics North America Corporation, Philips Electronics Industries (Taiwan), Ltd., and Philips da Amazonia Industria Electronica Ltda., relating to the antitrust violations alleged. Id. The Direct Purchaser Plaintiffs allege that the Philips entities participated in over 100 illegal meetings from 1996 to 2007. Direct Compl. ¶¶ 164-65. The Indirect Purchaser Plaintiffs allege that the Philips entities participated in at least 100 Glass Meetings between 1996 and 2001, and that after 2001, they participated through a joint venture with LG Electronics. Indirect Compl. ¶ 170.

Beijing Matsushita Color CRT Co., Ltd. ("BMCC"), is alleged to

1 have participated in over twenty illegal bilateral meetings.  
2 Direct Compl. ¶¶ 80, 173. The Indirect Purchaser Plaintiffs  
3 allege that high-level sales managers from BMCC participated in  
4 multiple Glass Meetings. Indirect Compl. ¶¶ 2, 148, 184. BMCC  
5 objects based on the fact that it makes CRTs only. See Docket No.  
6 618 ("BMCC Objections re: Direct Compl.") at 3, No. 619 ("BMCC  
7 Objections re: Indirect Compl.") at 1. BMCC is the only Defendant  
8 to object on this basis, but it is clear to the Court that the  
9 complaints do allege sufficient facts to state a plausible  
10 conspiracy regarding CRTs, especially given the Department of  
11 Justice investigation. See Part IV(C), supra. The Court  
12 therefore overrules this objection, and also grants Plaintiffs'  
13 request to amend paragraph 173 of the Direct Complaint, with  
14 respect to the allegations against BMCC, to change the year "2001"  
15 to "2007."

16 Whether Plaintiffs will be able to prove these allegations  
17 against each Defendant is another matter entirely. In general,  
18 Defendants' arguments for dismissal based on a failure to  
19 adequately plead against each Defendant rely upon arguments more  
20 appropriate at the summary-judgment stage of these proceedings  
21 when Defendants can put Plaintiffs to their burden of proof.  
22 Taken as a whole, the Court finds that both the Direct Complaint  
23 and the Indirect Complaint plausibly suggest that each Defendant  
24 participated in the alleged conspiracies. Therefore, it would be  
25 inappropriate to dismiss any of the Defendants from this action  
26 without the benefit of discovery.

27 ///



**E. Subject Matter Jurisdiction**

The Special Master recommends that the complaints should not be dismissed for lack of subject matter jurisdiction under the Foreign Trade Antitrust Improvements Act ("FTAIA"). Report at 16-18. The FTAIA provides that the Sherman Act does not apply to conspiracies involving trade or commerce with foreign nations, unless such conduct has direct, substantial, and reasonably foreseeable effects on United States commerce. 15 U.S.C. § 6a.

The Court agrees with Judge Legge that these complaints should not be dismissed based on the FTAIA. When announcing the indictment of C.Y. Lin, the Acting Assistant Attorney General suggested the alleged CRT conspiracy does have effects in the United States: "This conspiracy harmed countless Americans who purchased computers and televisions using cathode ray tubes at fixed prices." Direct Compl. ¶ 126; Indirect Compl. ¶ 205.

The Direct Complaint alleges that Defendants manufactured, sold, or distributed CRT products throughout the United States, either directly or through subsidiaries or affiliated companies. Direct Compl. ¶¶ 24-80. The Direct Complaint alleges plant closures in New York, Ohio, and Indiana in furtherance of the claimed conspiracy to reduce manufacturing capacity of CRTs. Id. ¶¶ 183, 185, 187. The Direct Complaint alleges adverse price effects in the United States due to Defendants' unlawful activities. Id. ¶¶ 188-89.

Similarly, the Indirect Purchaser Plaintiffs have alleged a conspiracy encompassing both CRTs and CRT Products that was carried out both in the United States, and abroad, which involved

1 a substantial amount of import and domestic commerce, and which  
2 targeted and injured American consumers. See, e.g., Indirect  
3 Compl. ¶¶ 1, 9, 10, 11, 12, 50-52, 54-59, 61-70, 72-78, 80-83,  
4 85-92, 94-95, 97-98, 100-02, 104-08, 114-16, 162, 167, 169, 171,  
5 174, 176, 178, 180, 182, 188, 240, 242, 246, 248-50, 255-71 and  
6 274-283. At this stage of the proceedings, these allegations are  
7 sufficient to withstand motions to dismiss for lack of subject  
8 matter jurisdiction.

9 **F. Antitrust Standing**

10 The Special Master recommends denial of the motions to  
11 dismiss based on Plaintiffs' supposed lack of standing. In  
12 deciding whether there is antitrust standing, courts consider: (1)  
13 the nature of the plaintiff's alleged injury; that is, whether it  
14 was the type the antitrust laws were intended to forestall; (2)  
15 the directness of the injury; (3) the speculative measure of the  
16 harm; (4) the risk of duplicative recovery; and (5) the complexity  
17 in apportioning damages. Associated Gen. Contractors of Cal.,  
18 Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 535-44  
19 (1983) ("AGC"). No single factor is decisive; courts are to  
20 balance the factors, giving "great weight to the nature of the  
21 plaintiff's alleged injury." American Ad Mgmt., Inc. v. Gen. Tel.  
22 Co. of Cal., 190 F.3d 1051, 1055 (9th Cir. 1999).

23 Here, the Direct Purchaser Plaintiffs allege they purchased  
24 CRTs or CRT Products from Defendants or their subsidiaries at  
25 inflated prices due to Defendants' unlawful conduct. Direct  
26 Compl. ¶¶ 11-23. This is the type of injury the antitrust laws  
27 were intended to address. Furthermore, courts have found

1 antitrust standing where plaintiffs purchased downstream goods  
2 from manufacturers who made, and allegedly fixed the price of, a  
3 component of those goods. See, e.g., In re Linerboard Antitrust  
4 Litig., 305 F.3d 145, 159-60 (3d Cir. 2002)(in alleged conspiracy  
5 to fix prices of linerboard, plaintiffs who purchased corrugated  
6 sheets or boxes containing linerboard from defendants had  
7 standing).

8 In Illinois Brick Company v. Illinois, the Supreme Court held  
9 that indirect purchasers generally may not sue for money damages  
10 under Section 4 of the Clayton Act. 431 U.S. 720, 730 (1977). In  
11 response, a number of states passed "repealer" statutes which  
12 expressly allow indirect purchasers to recover money damages for  
13 antitrust violations under state law. See California v. ARC Am.  
14 Corp., 490 U.S. 93, 97-98( 1989). In the present case, the  
15 Indirect Purchaser Plaintiffs' second claim for relief for state  
16 antitrust violations is predicated on the repealer statutes of  
17 Arizona, California, Iowa, Kansas, Michigan, Minnesota,  
18 Mississippi, Nebraska, Nevada, New Mexico, North Carolina, North  
19 Dakota, South Dakota, Tennessee, Vermont, West Virginia,  
20 Wisconsin. Indirect Compl. ¶¶ 255-71. The AGC factors apply to  
21 establish standing under Iowa, Nebraska, and California antitrust  
22 laws. In re Flash Memory Antitrust Litigation, 643 F. Supp. 2d at  
23 1151.

24 Defendants argue that the Indirect Purchaser Plaintiffs have  
25 not alleged that they participate in the same market as  
26 Defendants, and as such, their alleged injury is too remote,  
27 speculative, unmanageably complex, or duplicative. Docket No. 614

1 ("Joint Objections re: Indirect Compl.") at 12-13. However, the  
2 Indirect Complaint alleges that Plaintiffs paid "higher prices for  
3 CRT Products than they would have paid in the absence of  
4 Defendants' conspiracy." Indirect Compl. ¶ 222. It alleges that  
5 the "price of CRT Products is directly correlated to the price of  
6 CRTs." Id. ¶ 226. It alleges that the "market for CRTs and the  
7 market for CRT Products are . . . inextricably linked and cannot  
8 be considered separately." Id. ¶ 227. Indirect Purchaser  
9 Plaintiffs allege that Defendants monitored the prices of  
10 televisions and computer monitors in order to police their price  
11 fixing agreement related to CRTs. Id. ¶ 223. They point out that  
12 CRTs account for approximately sixty per cent of the cost of  
13 manufacturing a computer monitor, and a slightly smaller  
14 percentage of the cost of manufacturing a television, and as such  
15 it is easier to determine how much money was being passed through  
16 to purchasers of the finished products. Id. ¶ 228-30. CRTs are  
17 discrete components that can easily be traced. Id. ¶ 231. These  
18 allegations are sufficient to find the injury alleged in the  
19 Indirect Complaint is the kind antitrust laws were designed to  
20 rectify.

21 The Court also agrees with the Special Master that Plaintiffs  
22 have adequately pled standing to seek injunctive relief under  
23 Section 16 of the Clayton Act. See Report at 19; see also In re  
24 Warfarin Sodium Antitrust Litig., 214 F.3d 395, 399 (3d Cir. 2000)  
25 ("[I]njunctive relief under section 16 only requires a threat of  
26 loss" and section 16 is not as demanding as section 4 of Clayton  
27 Act).



1 meetings secret, such as varying meeting locations, limiting  
2 meeting attendees, avoiding note-taking, and agreeing to maintain  
3 the secrecy of meetings. Id. ¶¶ 137, 138, 154, 201, 204, 205.  
4 Plaintiffs allege that CRT manufacturers, including companies  
5 affiliated with Samsung, Philips, and LG Electronics, blamed price  
6 increases in 2004 on a shortage of glass shells. Id. ¶ 209.

7       The Indirect Complaint also contains allegations of  
8 fraudulent concealment. Indirect Purchaser Plaintiffs allege that  
9 the agreements reached at Glass meetings included agreements to  
10 keep their meetings secret. Indirect Compl. ¶ 156(1). Indirect  
11 Purchaser Plaintiffs allege Defendants agreed: "not to discuss  
12 publicly, or otherwise reveal, the nature and substance" of their  
13 dealings, and "to expel those who failed to do so"; "to limit the  
14 number of representatives from each Defendant attending their  
15 meetings so as to avoid detection"; "to refrain from listing the  
16 individual representatives of the Defendants in attendance at  
17 meeting in any meeting report"; "to refrain from taking meeting  
18 minutes or taking any kind of written notes during the meetings";  
19 and to give "false and pretextual reasons for CRT Product price  
20 increases." Indirect Compl. ¶ 290. Defendants also allegedly  
21 agreed "on what to tell customers about price changes"; agreed  
22 "upon the content of public statements regarding capacity and  
23 supply"; and agreed "to eliminate references in expense reports  
24 that might reveal the existence of their unlawful meetings." Id.  
25 When viewed in conjunction with the Court's earlier determination  
26 that the factual allegations in the complaints plausibly suggest  
27 that each Defendant participated in the conspiracy, these

1 allegations of fraudulent concealment are sufficient to deny  
2 Defendants' efforts to dismiss claims that accrued before Nov. 26,  
3 2003, based on the four-year statute of limitations.<sup>2</sup>

4 **H. Withdrawal Claims**

5 With regard to those Defendants who moved to dismiss based on  
6 claims that they withdrew from the alleged conspiracy in 2001 or  
7 2002, the Court agrees with the Special Master that this issue  
8 raises factual questions inappropriate for resolution at the  
9 motion-to-dismiss stage. See Report at 25. For example, how can  
10 the Court know at this stage of the proceedings whether the  
11 withdrawing Defendants maintained financial interests in the  
12 entities being sold or transferred? It would have been  
13 inappropriate for the Special Master to grant the motions to  
14 dismiss filed by the Philips Defendants, the Toshiba Defendants,  
15 the Hitachi Defendants, the LG Electronics Defendants, and BMCC,  
16 on these grounds.

17 **I. State Law Claims**

18 The Special Master recommends that a number of the state law  
19 claims in the Indirect Complaint should be dismissed. Report at  
20 27-31. The Indirect Purchaser Plaintiffs do not object to these  
21

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22 <sup>2</sup> The Court is concerned about the temporal scope of the  
23 alleged conspiracies in this case. As directed by the Court at the  
24 March 18, 2010 hearing, the parties met and conferred, but appear  
25 unable to reach a mutually acceptable proposal to present to the  
26 Court. See Docket Nos. 660, 661, and 662. The Court acknowledges  
27 that allegations of fraudulent concealment are fact-intensive. The  
28 Court encourages the parties to work with the Special Master on  
ways to streamline and efficiently manage discovery in this case.  
After discovery, the Court invites the parties to consider whether  
motions should be filed to determine the statute of limitations, or  
whether the matter should be left as a question for the jury.

1 rulings against them. Docket No. 641 ("Response to Joint  
2 Objections") at 1. The Court therefore adopts the recommendation  
3 of the Special Master, and DISMISSES the claims under Nebraska law  
4 based on sales made prior to July 20, 2002; the claims under  
5 Nevada law based on sales made prior to 1999; the claims under the  
6 Massachusetts Consumer Protection Act, with leave to amend; the  
7 claims under the Rhode Island Unfair Trade Practices and Consumer  
8 Protection Act; and the claims made under Kansas' common law of  
9 unjust enrichment.

10 The Special Master also recommends that a number of the state  
11 law claims should not be dismissed. Report at 30-33. Defendants'  
12 objections contains no specific discussion of these  
13 recommendations. Accordingly, the Court adopts the Special  
14 Master's recommendations, and DENIES the motions to dismiss  
15 Plaintiffs' claims under New York General Business Law Section  
16 349; the claims under Michigan common law of unjust enrichment;  
17 the claims of unjust enrichment under New York common law; and the  
18 unjust enrichment claims of several states based upon other  
19 statutes in those states.

20  
21 **V. CONCLUSION**

22 For the foregoing reasons, the Court APPROVES and ADOPTS the  
23 Special Master's tentative rulings and recommendations in the  
24 following particulars:

25 1. The Court finds that the relevant products alleged in the  
26 complaints are Cathode Ray Tubes ("CRTs") and CRT Products;

27 2. The Court DENIES Defendants' motions to dismiss based  
28



upon Twombly and Iqbal;

3. The Court DENIES Defendants' motions to dismiss based upon an alleged failure to adequately plead against "each defendant";

4. The Court DENIES Defendants' motions to dismiss based upon the Foreign Trade Antitrust Improvements Act, the Supremacy Clause, and the Commerce Clause;

5. The Court DENIES Defendants' motion to dismiss based upon Plaintiffs' alleged lack of standing;

6. The Court FINDS that the allegations of the direct and indirect complaints regarding fraudulent concealment are adequate to toll the statutes of limitations;

7. The Court DENIES Defendants' motions to dismiss both the direct and indirect complaints on the grounds of the statutes of limitations;

8. The Court GRANTS Plaintiffs' motion to amend paragraph 173 of the Direct Complaint, with respect to the allegations against BMCC to change the year "2001" to "2007";

9. The Court DENIES the motions of several Defendants for dismissal based on their alleged withdrawal from the conspiracy;

10. The Court DISMISSES the claims under Nebraska law based on sales made prior to July 20, 2002;

11. The Court DISMISSES the claims under Nevada law based on sales made prior to the 1999 date of Nevada's repealer statute;

12. The Court DISMISSES the claims under the Massachusetts Consumer Protection Act, with leave to amend;

13. The Court DENIES the motions to dismiss Plaintiffs'

1 claims under New York General Business Law Section 349;

2 14. The Court DISMISSES the allegations under the Rhode  
3 Island Unfair Trade Practices and Consumer Protection Act;

4 15. The Court DENIES the motion to dismiss the claims under  
5 Michigan common law of unjust enrichment;

6 16. The Court DISMISSES the claims under the Kansas' common  
7 law of unjust enrichment;

8 17. The Court DENIES Defendants' motion to dismiss the claims  
9 of unjust enrichment under New York common law;

10 18. The Court DENIES, without prejudice, Defendants' motions  
11 to dismiss the unjust enrichment claims of several states based  
12 upon other statutes in those states;

13 19. The Court requires Defendants to file answers within  
14 thirty (30) days from the date of this Order;

15 20. The Court respectfully directs the Special Master to set  
16 a date for a Case Management Conference to schedule further  
17 proceedings in this case.

18  
19 IT IS SO ORDERED.

20  
21 Dated: March 30, 2010

22   
UNITED STATES DISTRICT JUDGE